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OFFICE OF PETITIONS

In re Application of :
Brooks et al. :
Application No. 09/808,351 : ON PETITION
Filed: 15 March, 2001 :
Attorney's Docket No. 58593.000006 :

This is a decision on the petition under 37 CFR 1.137(b),¹ filed on 12 September, 2002, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 21 October, 2001, for failure to timely submit an oath or declaration in compliance

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

with 37 CFR 1.63 as required by the Notice to File Missing Parts of Nonprovisional Application mailed on 20 April, 2001, which set a two (2) month shortened period for reply. On 22 October, 2001, petitioners submitted a four (4) month time extension, but did not submit the oath or declaration. In response, on 6 December, 2001, a Notice of Incomplete Reply (Nonprovisional) was mailed. On 12 April, 2002, petitioners submitted an oath or declaration that was missing the signature of one of the inventors, Scott Hillyard. Accordingly, a Notice of Incomplete Reply (Nonprovisional) was mailed on 1 May, 2002, requiring an oath or declaration signed by joint inventor Hillyard. Notice of Abandonment was mailed on 12 February, 2003.

Petitioners have now submitted a declaration signed by joint inventor Hillyard.

The application will be forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.



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